

HOUSE No. 3440

The Commonwealth of Massachusetts

PRESENTED BY:

Cheryl A. Coakley-Rivera

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to the reduction of particulate emissions from diesel engines.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Cheryl A. Coakley-Rivera	10th Hampden
Ellen Story	3rd Hampshire
Denise Provost	27th Middlesex
Frank I. Smizik	15th Norfolk
Matthew C. Patrick	3rd Barnstable
Peter v. Kocot	1st Hampshire
Barbara A. L'Italien	18th Essex
Michael F. Rush	10th Suffolk
Steven J. D'Amico	4th Bristol
William N. Brownsberger	24th Middlesex
Carl M. Sciortino, Jr.	34th Middlesex
Jennifer M. Callahan	18th Worcester
Lori Ehrlich	8th Essex
Martha M. Walz	8th Suffolk
Alice K. Wolf	25th Middlesex
Christine E. Canavan	10th Plymouth
Kay Khan	11th Middlesex
Timothy J. Toomey, Jr.	26th Middlesex
Linda Dorcena Forry	12th Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO THE REDUCTION OF PARTICULATE EMISSIONS FROM DIESEL ENGINES.

Whereas, The deferred operation for this act would tend to defeat its purpose, which is forthwith to make to protect public health from the adverse impacts of particulate emissions from diesel engines, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 30 of General Laws is hereby amended by adding, after Section 39S, the
2 following new sections:—

3 Section 39T. Short title. This act shall be known as the "Diesel Emissions Reduction Act of
4 2009."

5 Section 39U. Legislative findings and purpose. The Legislature hereby finds and declares that:

6 (a) The purpose of this act is to minimize the public health risks from exposure to diesel
7 particulate emissions as expeditiously as practicable

8 (b) Diesel exhaust particle pollution poses a clear and present health risk to the people of
9 the Commonwealth. Diesel exhaust is a likely human carcinogen, and a prime
10 contributor to airborne fine particle pollution that is linked to premature death and
11 other serious cardiovascular and pulmonary problems such as heart attacks, abnormal
12 heart rhythms, atherosclerosis, stroke, asthma attacks, permanent respiratory damage
13 and retardation of lung growth in children.

14 (c) The health impacts from diesel emissions especially affect children, the elderly and
15 people with weakened immune systems.

16 (d) Particularly high concentrations of diesel emissions often are found in densely
17 populated, urban areas, disproportionately impacting ethnic minorities and people of
18 lower economic status.

19 (e) Diesel exhaust also contains black carbon emissions, which contribute to global
20 climate change.

21 (f) Practical, cost-effective measures to substantially reduce diesel particulate emissions
22 are available today, and can be applied to many existing diesel engines. The same
23 technology that limits diesel pollution from new diesel engines can be retrofitted onto
24 existing engines or applied in new replacement engines to reduce diesel emissions by
25 85% or better.

26 Section 39V. Definitions.

27 "Best available retrofit technology" means technology, verified by the United States
28 Environmental Protection Agency or California Air Resources Board (CARB) for
29 achieving reductions in particulate matter emissions at the highest classification level for
30 diesel emission control strategies that is applicable to the particular engine and
31 application. Such technology shall not result in a net increase in nitrogen oxides.

32 "CARB" means the California Air Resources Board.

33 "Certified engine configuration" means a new, rebuilt, or remanufactured engine
34 configuration—

- 35 (1) that has been certified or verified by USEPA or CARB;
36 (2) that meets or is rebuilt or remanufactured to a more stringent set of engine emissions
37 standards, as determined by DEP; and
38 (3) in the case of a certified engine configuration involving the replacement of an
39 existing engine or vehicle, an engine configuration that replaced an engine that was
40 removed from the vehicle and returned to the supplier for remanufacturing to a more
41 stringent set of engine emissions standards or for scrappage.

42 "CMAQ" means the federal Congestion Mitigation and Air Quality Improvement
43 Program reauthorized by Congress in 2005 by Sections 1101, 1103 and 1808 of the Safe,
44 Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–
45 LU) (Pub. L. 109–59, Aug. 10, 2005).

46 “Contractor” means any person that enters into a public works contract with a public
47 agency, or any person that enters into an agreement with such person or entity, to perform
48 work or provide labor or services related to such public works contract.

49 “Defective” means a condition in which an emission control system or component is
50 malfunctioning due to age, wear, mal-maintenance or design defects.

51 “DEP” means the Massachusetts Department of Environmental Protection.

52 “DERA” means the Diesel Emission Reduction Act, enacted by Congress as sections
53 791—797 of the Energy Policy Act of 2005 (Pub. L. 109–58, Aug. 8, 2005).

54 “Fleet” means one or more diesel vehicles or mobile or stationary diesel engines owned,
55 controlled or operated by the same person (and by any person that controls, is controlled by, or
56 has common control with such same person).

57 “Heavy-heavy duty diesel vehicle” means a motor vehicle with a gross vehicle weight
58 rating of at least 33,000 pounds that is powered by a diesel engine.

59 “Incremental cost” means the cost of a contractor’s actions to comply with the
60 requirements of section 106(a)(4)(B) and (5)(B) of this act, less the baseline cost that would
61 otherwise be incurred by the applicant or contractor in the normal course of business.
62 Incremental costs may include added lease or fuel costs as well as capital costs.

63 “Level 1 Control” means a Verified Diesel Emission Control Device that achieves a
64 particulate matter (PM) emission reduction of 25% or more from uncontrolled engine emission
65 levels.

66 “Level 2 Control” means a Verified Diesel Emission Control Device that achieves a
67 particulate matter (PM) emission reduction of 50% or more from uncontrolled engine emission
68 levels.

69 “Level 3 Control” means a Verified Diesel Emission Control Device that achieves a
70 particulate matter (PM) emission reduction of 85% or more from uncontrolled engine emission
71 levels, or that reduces emissions to less than or equal to 0.01 grams of PM per brake
72 horsepower-hour. Level 3 Control includes repowering or replacing the existing diesel engine

73 with an engine meeting USEPA’s 2007 Heavy-duty Highway Diesel Standards, or in the case
74 of a nonroad engine, an engine meeting the USEPA’s Tier 4 Nonroad Diesel Standards; Level
75 3 Control also includes new diesel engines meeting said USEPA emissions standards.

76 “Motor vehicle” means any self-propelled vehicle designed for transporting persons or
77 property on a street or highway, including an on-road diesel vehicle.

78 “Nonroad engine” means an internal combustion engine (including the fuel system) that
79 is used in a regulated nonroad vehicle.

80 “PM2.5” means particulate matter that is 2.5 micrometers or smaller in size.

81 “Primarily engaged in interstate commerce” means, with respect to a Regulated Highway
82 Diesel Vehicle, a vehicle that is not registered in the Commonwealth, is engaged in interstate
83 commerce, and during its life (or if longer than 3 years, the most recent 3 calendar years) has
84 operated for more than 50% of its travel miles outside of the Commonwealth, in accordance
85 with regulations promulgated by DEP pursuant to this act.

86 “Public agency” means a commonwealth, city, county, administration, department,
87 division, bureau, board or commission, or a corporation, institution or agency of government,
88 the expenses of which are paid in whole or in part from the public treasury.

89 “Public works contract” means a contract with a public agency for a construction
90 program or project involving the construction, demolition, restoration, rehabilitation, repair,
91 renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or
92 bridge; a contract with a public agency regarding the preparation for any construction program
93 or project involving the construction, demolition, restoration, rehabilitation, repair, renovation,
94 or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a
95 contract with a public agency for any final work involved in the completion of any construction
96 program or project involving the construction, demolition, restoration, rehabilitation, repair,
97 renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or
98 bridge.

99 “Regulated Highway Diesel Vehicle” means any of the following heavy-heavy duty
100 diesel vehicles having a model year 1994 through 2006 and operating within the

101 Commonwealth and not primarily engaged in interstate commerce, all as may be further
102 defined in an inclusive manner in regulations promulgated by DEP pursuant to this act:

- 103 (1) commercial and transit buses;
- 104 (2) waste haulers;
- 105 (3) highway and other maintenance, construction and other trucks owned by or operated
106 on behalf of public agencies, including but not limited to dump trucks, graders and
107 snow plows;
- 108 (4) freight and cargo delivery trucks with central fleet maintenance or fueling locations
109 within the State; and
- 110 (5) such other 1994-2006 model year heavy-heavy-duty highway diesel vehicles not
111 primarily engaged in interstate commerce as DEP may designate by regulation.

112 “Regulated Nonroad Vehicle” means a vehicle or equipment operating within the
113 Commonwealth that is powered by a nonroad engine, seventy-five horsepower and greater, and
114 that is a crawler, tractor, dozer, backhoe, or skid-steer loader, all as may be further defined in
115 an inclusive manner in regulations promulgated by DEP pursuant to this act.

116 “Retrofit” means to equip a diesel motor vehicle or nonroad vehicle with new particulate
117 emissions-reducing parts or technology verified by USEPA or CARB after manufacture of the
118 original engine.

119 “RMV” means the Massachusetts Registry of Motor Vehicles.

120 “Ultra low sulfur diesel fuel” means diesel fuel that has a sulfur content of no more than
121 fifteen parts per million.

122 “USEPA” means the United States Environmental Protection Agency.

123 “USEPA’s 2007 Heavy-duty Highway Diesel Standards” means those regulations
124 promulgated by USEPA and published in the Federal Register at 66 Fed. Reg. 5002 on January
125 18, 2001.

126 “USEPA’s Tier 4 Nonroad Diesel Standards” means those regulations promulgated by
127 USEPA and published in the Federal Register at 69 Fed. Reg. 38958 on June 29, 2004.

128 “Verified diesel emission control device” means:

129 (1) an emission control device or strategy that has been verified to achieve a specified
130 diesel PM reduction by USEPA or CARB; or

131 (2) replacement or repowering with an engine that is certified to specific PM emissions
132 performance by USEPA or CARB.

133 Section 39W. DEP Regulations.

134 Within one year of the effective date of this act, DEP shall, after written notice and public
135 hearing, promulgate regulations implementing the provisions of this act.

136 Section 39X. Reduction of on-road diesel emissions.

137 (a) Level 3 Controls required. Except as provided in subsections (b), (c) and (d), on and after
138 January 1, 2013, no fleet owner or operator shall operate any Regulated Highway Diesel
139 Vehicle in the Commonwealth unless that vehicle has installed Level 3 controls and unless
140 such controls are properly maintained and functioning.

141 (b) Existing controls. Any Regulated Highway Diesel Vehicle that has operational
142 Level 1 Control installed prior to the effective date of this act shall have an additional two
143 years to meet the requirements of subsection (a), and any Regulated Highway Diesel
144 Vehicle that has operational Level 2 Control installed prior to the effective date of this act
145 shall have an additional four years to meet the requirements of subsection (a).

146 (c) Small fleets. Any owner or operator of a fleet or fleets (including for the purpose of this
147 subsection any fleet or fleets owned or operated by related persons) consisting in the
148 aggregate of five or fewer Regulated Highway Diesel Vehicles, shall have an additional
149 two years to comply with the requirements of subsections (a), (b) and (d)(1).

150 (d) Exemptions.

151 (1) Level 2 Controls. Subsection (a) shall not apply to any Regulated Highway Diesel
152 Vehicle if DEP makes a written finding that no Verified diesel emissions control
153 device with Level 3 Controls exists for such vehicle, in which case such fleet owner
154 or operator shall install Level 2 Controls that are available and appropriate for such
155 vehicle as determined by DEP.

156 (2) Low-use Vehicles. Subsections (a), (b), and (d)(1) shall not apply to any Regulated
157 Highway Diesel Vehicle whose propulsion engine was operated in the
158 Commonwealth for fewer than 1,000 miles and less than 100 hours during the
159 preceding calendar year, as confirmed by engine operation data from a properly
160 functioning odometer and non-resettable hour meter.

161 (3) Emergency Vehicles. Subsections (a), (b), (d)(1) shall not apply to any vehicles that
162 are specially equipped and operated for emergency response by a state authority,
163 offices of emergency management, sheriff's office, police department or fire
164 department.

165 (e) Penalties.

166 (1) Any owner or operator of a Regulated Highway Diesel Vehicle that is found by DEP
167 to be in noncompliance with this section shall be liable to pay a civil penalty in an
168 amount assessed by DEP not to exceed \$5,000 per violation, with each day of
169 noncompliance of each vehicle constituting a separate violation, and may have the
170 registration of said vehicle revoked by RMV, all in accordance with regulations
171 promulgated by DEP, and, as appropriate, RMV.

172 (2) Monies collected in penalties will be distributed 50% to the Diesel Emissions
173 Reduction Fund, 25% to DEP as the enforcing agency, and 25% to the ticketing agency,
174 i.e. state or local police.

175 (f) Sticker Display. Each regulated highway diesel vehicle subject to the provisions of this
176 section shall display a compliance sticker clearly and conspicuously indicating its
177 installed level of emissions control

178 (g) All emissions control technology shall be operated, maintained and serviced as
179 recommended by the manufacturer.

180 (h) Ultra low sulfur diesel highway fuel required. After the effective date of this act, no
181 person shall sell, deliver or distribute diesel fuel for diesel motor vehicles within the State
182 other than ultra-low sulfur diesel fuel, and no person shall operate a diesel motor vehicle
183 within the State using diesel fuel other than ultra low sulfur diesel fuel.

184 Section 39Y. Public Works Contracts Environmental Performance Specifications.

185 (a) On and after six months following effective date of this act, any solicitation for a public
186 works contract, and any contract entered into as a result of such solicitation, shall include

187 the following specifications that all contractors shall comply with in the performance of
188 such contract:

189 (1) Ultra low sulfur diesel fuel or an ultra low sulfur diesel blend with a sulfur content of
190 15 ppm or less shall be used in all diesel nonroad vehicles and heavy duty diesel
191 vehicles;

192 (2) All Regulated Nonroad Vehicles on site for more than three days during the project
193 shall install and operate:

194 (A) a minimum of Level 1 Controls no later than January 1, 2011; and,

195 (B) Level 3 Controls no later than January 1, 2013;

196 (3) All heavy-heavy duty diesel vehicles on site for more than three days during the
197 project shall install and operate Level 3 Controls no later than January 1, 2011;

198 (4) Each Regulated Nonroad Vehicle and heavy-heavy duty diesel vehicle on site shall
199 display a compliance sticker clearly and conspicuously indicating its installed level of
200 emissions control; and

201 (5) All emissions control technology shall be operated, maintained and serviced as
202 recommended by the manufacturer.

203 (b) (1) Any public works contract shall provide full or partial reimbursement from the public
204 works project funds for incremental costs incurred by eligible contractors that are necessary
205 to bring Regulated Nonroad Vehicle and heavy-heavy duty diesel vehicles used on that
206 specific project into compliance with the requirements of subsections (2)(A), and (B) and
207 (3) for that specific project; provided, however, that no reimbursement shall be payable for
208 costs incurred after 18 months following the applicable compliance date. Each relevant
209 agency shall establish annually, on January 1st, the reimbursement percentage to be applied
210 to all of its public works contracts for each calendar year beginning in 2010 through 2014.
211 Eligible contractors shall apply for such reimbursement providing such information as the
212 public agency shall require. Only one reimbursement shall be provided for each Regulated
213 Nonroad Vehicle or heavy-heavy duty diesel vehicle; expenditures shall not be eligible for
214 reimbursement to the extent they were incurred to bring such vehicle into compliance with
215 a different provision of this act or any other federal or state law or regulation, or if such
216 expenditures have been previously reimbursed using funds from any other public works

217 contract or any other public agency, and each application for reimbursement shall include
218 appropriate contractor certifications concerning these prohibitions.

219 (2) The costs of compliance with subsection (a) that are reimbursed by the public agency
220 under subsection (b)(1) shall not be included in the project bid or considered by the public
221 agency in evaluating bids.

222 (c) The public agency entering into a public works contract may elect to provide
223 reimbursement for retrofits of project Regulated Nonroad Vehicle and heavy-heavy duty
224 diesel vehicles authorized under subsection (b) in the form of rebates in amounts
225 established by DEP for particular types of vehicles; provided that DEP has established by
226 regulation applicable policies, procedures and safeguards for such rebates.

227 (d) Any public works contract shall provide for enforcement of the contract provisions
228 required by subsection (a) and penalties for noncompliance of such provisions.

229 (e) Subsections (a)(2) and (3) shall not apply to a Regulated Nonroad Vehicle or heavy-heavy
230 duty diesel vehicle where the involved public agency makes a written finding, which is
231 approved, in writing, by DEP, that no Verified diesel emissions control device with Level 3
232 Controls exists for such vehicle, in which case the vehicle may operate on the project site
233 only if it has been retrofit with Level 2 Controls that are available and appropriate for such
234 vehicle as determined by DEP; provided that if the involved public agency makes a written
235 finding, which is approved, in writing, by DEP, that no Verified diesel emissions control
236 device with Level 2 Controls exists for such vehicle, said vehicle may operate on site once
237 it has been retrofit with such Level 1 Controls that are available and appropriate for such
238 vehicle as determined by DEP. All findings made pursuant to this subsection and
239 information relating thereto shall be publicly available, and DEP shall post them on its
240 website.

241 Section 39Z. Diesel Emissions Reduction Funding Program

242 (a) Fund. The Diesel Emissions Reduction Fund (the "Fund") is hereby established as an
243 account in the state treasury.

244 (1) The fund shall be administered by the state treasurer for the benefit of the Diesel
245 Emissions Reduction Funding Program (the "Program") established under this
246 section.

247 (2) Interest earned on the fund shall be credited to the Fund.

- 248 (3) The Fund consists of: (1) the contributions, fees, and surcharges under: (A)
249 subsections 5-7 and 9; and (B) penalties and fees deposited in the Fund pursuant with
250 this act.
- 251 (4) Monies in the Fund may be used only to implement the Program, provided that a
252 maximum of two per cent of the money in the Fund may be used for administrative
253 costs incurred by the DEP and the state treasurer. Monies allocated to an eligible
254 project but not expended in any fiscal year may be carried over to succeeding fiscal
255 years.
- 256 (5) A surcharge is hereby imposed on the retail sale, lease, or rental of new nonroad
257 diesel vehicles in an amount equal to one per cent of the sales price or the lease or
258 rental amount.
- 259 (6) A surcharge is hereby imposed on every retail sale, lease or rental of every heavy
260 duty diesel vehicle that is of a model year of 1998 or earlier and that is sold or leased
261 in this state. The amount of the surcharge is 2.5% of the total consideration.
- 262 (7) In addition to the registration fees charged under section 33 of Chapter 90, a
263 surcharge is hereby imposed on the registration of a heavy duty diesel vehicle under
264 that section in an amount equal to ten percent of the total fees due for registration of
265 such vehicle there under. Said surcharges shall be remitted to the state treasurer for
266 deposit in the Fund.
- 267 (8) The bonding authority is hereby authorized to issue up to \$10,000,000 annually
268 before 2018 in bonds to be used solely to fund revolving loans to eligible diesel
269 emission reduction projects as described in this section.
- 270 (9) The Fund shall also consist of designated monies received by the State under DERA,
271 CMAQ, environmental penalties assessed by the director, supplemental
272 environmental project funds, and any other sources of revenue that may hereafter so
273 be designated.
- 274 (10)The state treasurer shall adopt any procedures needed for the collection,
275 administration and enforcement of the surcharge authorized by this subsection, and
276 shall deposit all surcharges to the credit of the Fund.

277 (b) Establishment and Administration of the Program. DEP, in consultation with the state
278 treasurer, shall establish by regulations promulgated pursuant to this act the
279 Massachusetts Diesel Emissions Reduction Funding Program in accordance with this act.

280 (1) DEP shall administer the Program and shall provide grants and low-cost revolving
281 loans from the Fund, on a competitive basis, to eligible projects to achieve significant
282 reductions of diesel particulate emissions and/or reduced exposure to diesel
283 particulate matter.

284 (2) In administering the Program and in accordance with the requirements of this act,
285 DEP shall:

286 (A) manage Program funds and oversee the Program;

287 (B) produce guidelines, protocols, and criteria for eligible projects;

288 (C) develop methodologies for evaluating project benefits and cost-effectiveness;

289 (D) develop procedures for monitoring whether the emissions reductions projected for
290 projects awarded grants under this chapter are actually achieved;

291 (E) prepare reports regarding the progress and effectiveness of the Program; and

292 (F) take all appropriate and necessary actions so that emissions reductions achieved
293 through the Program may be credited by USEPA to the appropriate emissions
294 reduction objectives in the state implementation plan.

295 (c) Applications.

296 (1) To receive a grant or loan under the Program, the applicant shall submit to DEP
297 an application at a time, in a manner, and including such information DEP may
298 require.

299 (2) An application under this subsection shall include--

300 (A) a description of the air quality of the area in which the project fleets will
301 operate;

302 (B) a description of the project proposed by the applicant, including--

303 i. any certified engine configuration or verified technology proposed to be
304 used or funded in the project; and

305 ii. the means by which the project will achieve a significant reduction in
306 diesel emissions;

- 307 (C) an evaluation of the quantifiable and unquantifiable benefits of the emissions
- 308 reductions of the proposed project;
- 309 (D) an estimate of the cost of the proposed project;
- 310 (E) a description of the age and expected lifetime control of the equipment to be
- 311 used or funded in the proposed project;
- 312 (F) a description of the diesel fuel available in the areas to be served by the
- 313 proposed project, including the sulfur content of the fuel;
- 314 (G) provisions for the monitoring and verification of the project; and
- 315 (H) such other information as may be required by DEP.

316 (d) Eligibility.

317 (1) A proposed project must meet the requirements of this section to be eligible for a

318 grant or loan under the Program.

319 (2) DEP may consider for funding the following types of projects --

- 320 (A) Installation of a retrofit technology, including any incremental costs of a
- 321 repowered or new diesel engine, that significantly reduces particulate
- 322 emissions through development and implementation of a certified engine
- 323 configuration or a verified diesel emission control device for (i) a bus; (ii) a
- 324 medium-duty truck or a heavy-duty truck; (iii) a commercial marine engine;
- 325 (iv) a locomotive; or (v) a nonroad diesel engine or vehicle used in
- 326 construction, handling of cargo, including at a port or airport, agriculture,
- 327 mining, or energy production; or
- 328 (B) programs or projects to reduce long-duration idling using verified technology
- 329 involving a vehicle or equipment described in subsection (A).

330 (3) In providing a grant or loan under the Program, and subject to the provisions of

331 subsection (c), DEP shall give priority to otherwise eligible projects that, as

332 determined by DEP--

- 333 (A) maximize public health benefits;
- 334 (B) are the most cost-effective;
- 335 (C) serve areas (i) with the highest population density;(ii) that are poor air quality
- 336 areas, including areas identified by DEP as in nonattainment or maintenance
- 337 of national ambient air quality standards for a criteria pollutant, Federal Class

338 I areas; or areas with toxic air pollutant concerns; (iii) that receive a
339 disproportionate quantity of air pollution from a diesel fleets, including
340 truckstops, ports, rail yards, terminals, and distribution centers; or (iv) that use
341 a community-based multistakeholder collaborative process to reduce toxic
342 emissions;

343 (D) include a certified engine configuration or verified technology that has a long
344 expected useful life;

345 (E) will maximize the useful life of any certified engine configuration or verified
346 technology used or funded by the project; and,

347 (F) conserve diesel fuel

348 (4) For a proposed project to be eligible for Program funding, other than a project
349 involving a marine vessel or engine, not less than 75 percent of vehicle miles
350 traveled or hours of operation projected for the five years immediately following
351 the award of a grant must be projected to take place in this state. For a proposed
352 project involving a marine vessel or engine, the vessel or engine must be operated
353 in the intercoastal waterways or bays adjacent to this state for a sufficient amount
354 of time over the lifetime of the project, as determined by DEP, to meet the cost-
355 effectiveness requirements of subsection (e).

356 (5) Each proposed project must meet the cost-effectiveness requirements of
357 subsection (e).

358 (6) A proposed project based on the use of a certified engine configuration or verified
359 technology must document, in a manner acceptable to DEP, a reduction in
360 particulate emissions of at least 50 percent compared with the baseline emissions
361 adopted by DEP for the relevant engine year and application. After study of
362 available emissions reduction technologies, after public notice and comment, DEP
363 may revise the minimum percentage reduction in particulate emissions required
364 by this subsection to improve the ability of the program to achieve its goals.

365 (7) If a baseline emissions standard does not exist for on-road or non-road diesels in a
366 particular category DEP, for purposes of this section, shall establish an
367 appropriate baseline emissions level for comparison purposes.

368 (8) DEP may approve payments to offset the incremental cost, over the expected
369 lifetime of the vehicle, of the use of qualifying fuel in a on-road or non-road
370 diesel vehicle if the proposed project as a whole, including the incremental fuel
371 cost, meets the requirements of this subchapter. DEP shall develop an appropriate
372 method for converting incremental fuel costs over the lifetime of the non-road
373 diesel into an initial cost for purposes of determining cost-effectiveness as
374 required by subsection (e).

375 (e) Cost-effectiveness

376 (1) For purposes of this section, “cost-effectiveness” means the total dollar amount
377 divided by the total number of tons of particulate matter reduction attributable to
378 that expenditure. In calculating cost-effectiveness, one-time grants of money at
379 the beginning of a project shall be annualized using a time value of public funds
380 or discount rate determined for each project by DEP, taking into account the
381 interest rate on bonds, interest earned by state funds, and other factors DEP
382 considers appropriate.

383 (2) DEP shall establish reasonable methodologies for evaluating project cost-
384 effectiveness consistent with subsection (e)(1) and with accepted methods.

385 (3) Except as provided by subsection (e)(7), DEP may not award a grant for a
386 proposed project the cost-effectiveness of which, calculated in accordance with
387 subsections (e)(1) and (2) and criteria developed thereunder, exceeds \$135,000
388 per ton of PM10 emissions. This subsection does not restrict DEP authority under
389 other law to require emissions reductions with a cost-effectiveness that exceeds
390 \$135,000 per ton.

391 (4) DEP may not award a grant that, net of taxes, provides an amount that exceeds the
392 incremental cost of the proposed project.

393 (5) DEP shall adopt guidelines for capitalizing incremental lease costs so those costs
394 may be offset by a grant under this section.

395 (6) In determining the amount of a grant under this section, DEP shall reduce the
396 incremental cost of a proposed new purchase, lease, retrofit, repower, or add-on
397 equipment project by the value of any existing financial incentive that directly

398 reduces the cost of the proposed project, including tax credits or deductions, other
399 grants, or any other public financial assistance.

400 (7) Adjustment of cost-effectiveness. Based upon a study of available emissions
401 reduction technologies and costs and after public notice and comment, DEP may
402 change the values of the maximum grant award criteria established in subsection
403 (e)(3) to account for inflation or to improve the ability of the program to achieve
404 its goals.

405 Section 39AA. Miscellaneous.

406 (a) Reporting. Persons subject to this act, including owners and operators of Regulated
407 Highway Diesel Vehicles and Regulated Nonroad Vehicles, shall provide such
408 information, reporting and monitoring as DEP may require by regulations promulgated
409 pursuant to this act for the purpose of implementing the provisions of this act.

410 (b) Equitable Relief Authorized. In addition to other remedies provided in this act, DEP may
411 seek injunctive relief in any court of competent jurisdiction to enforce any provision of
412 this act.

413 (c) Severability. If any clause, sentence, paragraph, section or provision of this act shall be
414 adjudged by any court of competent jurisdiction to be invalid, such judgment shall not
415 affect, impair or invalidate the remainder of this act, but shall be confined in its operation
416 to the clause, sentence, paragraph, section or provision of this act directly involved in the
417 controversy in which the judgment shall have been rendered.

Effective Date. This act shall take effect immediately upon enactment.